

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

SEYED MATOOFI,  
Appellant

v.

G1-19-094

DEPARTMENT OF CORRECTION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Seyed Matoofi

Appearance for Respondent:

Joseph Santoro  
Department of Correction  
Industries Drive: P.O. Box 946  
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

**DECISION**

On April 16, 2019, the Appellant, Seyed Matoofi (Mr. Matoofi), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Correction (DOC) to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). I held a pre-hearing conference on May 7, 2019 at the offices of the Commission and I held a full hearing at the same location on July 22, 2019.<sup>1</sup> The hearing was digitally recorded.<sup>2</sup>

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

## **FINDINGS OF FACT:**

Nine (9) exhibits were entered into evidence at the hearing. Based on those exhibits, the stipulated facts, the testimony of:

*Called by DOC:*

- Eugene T. Jalette, Supervising Identification Agent;
- Robert Crowell, Correction Officer I (CO I), Background Investigator;

*Called by the Appellant:*

- Seyed Matoofi, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Matoofi is thirty-three (33) years old; married and resides in Quincy. (Testimony of Mr. Matoofi & Exhibits 3,6)
2. Mr. Matoofi was born in Iran and lived there until he was 21 years old. He is fluent in English, Persian and Malay. (Exhibit 6)
3. While living in Iran, Mr. Matoofi converted to Christianity at the age of 18. For the next three (3) years, he was subjected to persecution by government officials who visited his home, threw out his bible, slapped him in the face, demanded that he “repent” and, at one point, detained him in a lock-up. (Testimony of Mr. Matoofi)
4. At the age of 21, Mr. Matoofi moved to Malaysia and sought asylum through the United Nations. (Testimony of Mr. Matoofi)

5. While in Malaysia, he was detained (twice) in a detention center, based on his failure to show legal residence. The detentions lasted six months and one year, respectively. Mr. Matoofi described the deplorable conditions he and others endured. (Testimony of Mr. Matoofi)
6. Mr. Matoofi and his wife eventually obtained asylum in the United States. He is now a permanent legal resident and is applying for US Citizenship. His wife speaks limited English. (Testimony of Mr. Matoofi)
7. While living in the United States, he has struggled to obtain employment, in part, because of facial tattoos. For financial reasons, he attempted to remove the tattoos on his own using acid. He experienced painful side effects to the chemicals. (Testimony of Mr. Matoofi)
8. Mr. Matoofi is now currently employed. His current employer described Mr. Matoofi as “... a model employee who is always on time ... very mature and has good relationships with co-workers.” (Exhibit 3)
9. A prior employer described Mr. Matoofi as “very mature” and “responsible” and that he “was always on time and rarely took a day off”. (Exhibit 3)
10. Mr. Matoofi took and passed the civil service examination for CO I on April 14, 2018. (Stipulated Fact)
11. On October 22, 2018, Mr. Matoofi’s name appeared on Certification No. 05868 from which DOC ultimately appointed one-hundred sixty (160) CO Is. (Stipulated Fact)
12. Mr. Matoofi was ranked 56<sup>th</sup> among those willing to accept appointment on Certification No. 05868 and four (4) candidates ranked below him were appointed. (Stipulated Facts)
13. Mr. Matoofi completed an application for employment. The following two (2) questions appear on Page 17 of the application:

- “Do you have any family (including in-laws), relatives that have ever been or is currently incarcerated in ANY Federal, State, or County jail/prison?”
- “Do you have any acquaintance(s) or personal friend(s) who are currently OR have been incarcerated in ANY Federal, State or county jail/prison?”

Mr. Matoofi answered “No” to both questions. (Exhibit 6)

14. DOC completed a background investigation of Mr. Matoofi. (Exhibit 3)

15. As part of the background investigation, the background investigator reviewed two (2) Quincy Police Department Incident Reports from 2015 and 2017. (Exhibits 3,4,5)

16. The 2015 Incident Report indicates that Mr. Matoofi called 911 for mental health-related reasons and was transported to a local hospital where he received care for two (2) days. (Exhibit 5)

17. The 2017 Incident Report indicates that Mr. Matoofi’s wife called 911. The report states in part: “Female caller States Her Husband is Having a Mental Issue and Is Trbl Breathing. Language Barrier. Caller States Husband is Outside and Will Not Let Her Take Him to Hospital.” The reports goes on to state that, after police arrived, the request for police was “S VOIDED”. (Exhibit 4)

18. During a home visit, the background investigator questioned Mr. Matoofi about these two reports. Mr. Matoofi acknowledged to the investigator that, at the time, in 2015, he called 911 because he was depressed and anxious about his longer-than-expected recovery from the acidic burns to his face and provided the background investigator with further details. At no time, however, did Mr. Matoofi intend to harm himself. In regard to the 2017 call, Mr. Matoofi explained to the background investigator that he was experiencing breathing issues

which prompted his wife to call 911 and that the reference to a “mental issue” was due to a language barrier. (Exhibit 3)

19. As part of the background interview, Mr. Matoofi signed an “initial interview checklist” that was completed in conjunction with the background investigator. Question 5 on that checklist states: “Have you ever been convicted of a misdemeanor and served time in a jail or House of Correction for said conviction?” Question 6 states: Have you ever been convicted of any crime, which resulted in your being imprisoned?” Mr. Matoofi answered “no” to both questions. (Exhibit 9)
20. On December 13, 2018, the background investigator completed his report. On the final page of the report, the background investigator included: “No criminal history; good driving records” under “Positive Employment Aspects” and then wrote: “No college degree; 2 Police Reports on Mental Health” under Negative Employment Aspects.” (Exhibit 3)
21. At some point prior to the conditional offer of employment, Mr. Matoofi took and passed the physical abilities test (PAT), which requires medical pre-clearance. (Testimony of Mr. Jalette)
22. At some point prior to the conditional offer of employment, Mr. Matoofi was interviewed by a panel of DOC employees who deemed him suitable to proceed with the hiring process. (Testimony of Mr. Jalette)
23. The background investigator reviewed his report with Mr. Jalette. (Testimony of Mr. Crowell)
24. On January 11, 2019, DOC provided Mr. Matoofi with a conditional offer of employment. (Exhibit 7)

25. On January 29, 2019, Mr. Matoofi completed a psychological evaluation. The cover letter accompanying the report, provided to DOC that same day, stated in relevant part: “This letter is to confirm that Seyed Matoofi does possess the psychological qualifications for the position of Correction Officer for the Massachusetts Department of Correction.” (emphasis in original) (Exhibit 8)
26. The psychological report, which accompanied the cover letter, stated in part:
- “His refuge (sic) status may make him sensitive to the ‘outsider’ position of inmates. He has been persecuted, questioned, prohibited from schooling, and has been detained as a part of the immigration process. He was imprisoned for a year in Malaysia, (not for a crime), described it as a ‘horrible detention center’.”(Exhibit 8)
27. Prior to receiving the results of the above-referenced psychological report, Mr. Jalette met with the DOC Commissioner to discuss Mr. Matoofi’s candidacy. The DOC Commissioner was primarily concerned with the 2015 and 2017 calls to 911 and wanted to hold off on any decision until DOC received the results of the psychological evaluation. (Testimony of Jalette)
28. Mr. Jalette had a follow-up meeting with the DOC Commissioner after DOC received the results of the psychological evaluation. Based primarily on concerns related to the 2015 and 2017 incident reports, DOC decided to bypass Mr. Matoofi for appointment. (Testimony of Jalette)
29. On March 7, 2019, DOC notified Mr. Matoofi that he was being bypassed for appointment. The reasons for bypass in the March 7, 2019 letter were:
- “Background investigation: Failed background due to police reports and failure to disclose imprisonment in Malaysia; specifically on 6/13/2015 Quincy Police responded at your request for a well-being check, on 02/06/17 Quincy Police were called to your home for a similar issue; additionally, you failed to disclose to the background investigator that you were imprisoned for a year in Malaysia, this fact was only disclosed during a physiological (sic) exam.”  
(Exhibit 2)

### *Legal Standard*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was

“reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

### *Analysis*

This bypass was not justified for the reasons discussed below.

First, *after* providing Mr. Matoofi with a conditional offer of employment, DOC then bypassed him, in part, for reasons DOC was aware of prior to making the conditional offer. Specifically, DOC was aware that, in 2015 and 2017, Quincy Police responded to Mr. Matoofi’s home based on reports of mental health issues. Mr. Matoofi provided a detailed explanation to the background investigator regarding these calls; the background investigator included all of this information in his report; and DOC then granted him a conditional offer of employment.

In Police Dep’t of Boston v. Kavaleski, [463 Mass. 680](#), 682 fn.5 (2012), the SJC stated, that:

"to comport with the requirements of the Massachusetts antidiscrimination law, G.L. c. 151B, § 4 (16), and provisions of the Americans with Disabilities Act, 42 U.S.C. § 12112(d) 2006, an employer may not conduct medical or psychological testing prior to making an offer of employment, but may condition an offer of employment on the successful completion of testing."

In Police Dep’t of Boston v. Kavaleski and Civ. Serv. Comm’n and Kavaleski v. Reade and City and City of Boston, Suffolk Sup. Ct. No. 09-4978-C (consolidated cases)(August 14, 2014), the Superior Court stated, that:

“... Apart from this footnote [fn.5 in SJC decision in Kavaleski, *supra*], there does not appear to be any Massachusetts case law on this issue. The MCAD guidelines do offer some guidance, however. MCAD Guidelines at V(B). See Dahill, 434 Mass. at 239 (‘The guidelines represent the MCAD’s interpretation of G.L. c. 151B, and are entitled to substantial deference even though they do not carry the force of law.’) Specifically, the Guidelines provide as follows: ‘An employer must make a conditional job offer before requiring a medical examination (and/or making inquiries). A conditional job offer is an offer of employment to a job applicant which is contingent upon the satisfactory results of a medical examination (and/or inquiry). Prior to



making a conditional job offer, the employer should have evaluated all relevant non-medical information. MCAD Guidelines at V(B).”

Applied here, DOC cannot, after granting Mr. Matoofi a conditional offer of employment, then bypass him based on the information in the police incident reports, as it was part of a background investigation completed prior to making the conditional offer.

Second, those police incident reports are not related to any wrongdoing by Mr. Matoofi. Rather, they plainly relate to *medical* issues. Thus, they should not be considered by DOC as a part of a background investigation of non-medical information. The fact that Quincy Police, as opposed to or in addition to Quincy EMS, responded to the call, does not give DOC license to question a candidate about *medical-related* issues prior to granting him a conditional offer of employment. Applied here, such a practice could lead to a chilling effect that discourages those in need of mental health services at the time from seeking assistance.

Third, regardless of whether and when DOC was permitted to consider these medical-related issues, the mental health professionals who evaluated Mr. Matoofi during the hiring process in 2019 told DOC that: “Seyed Matoofi **does** possess the psychological qualifications for the position of Correction Officer for the Massachusetts Department of Correction.”

That leads to the other reason that DOC used to bypass Mr. Matoofi: his alleged untruthfulness for failing to notify DOC that he was “imprisoned” in Malaysia. The word “imprisoned” was first used in the report filed by the mental health professional who conducted Mr. Matoofi’s psychological evaluation and stated that Mr. Matoofi had been “ ... persecuted, questioned, prohibited from schooling, and has been detained as a part of the immigration process. He was imprisoned for a year in Malaysia, (not for a crime)” and that Mr. Matoofi described the facility as a “horrible detention center”.

DOC used this statement from the mental health professional to conclude that Mr. Matoofi “fail[ed] to disclose imprisonment in Malaysia”. The only questions posed to Mr. Matoofi that are arguably related to this topic are the following:

- “Do you have any family (including in-laws), relatives that have ever been or is currently incarcerated in ANY Federal, State, or County jail/prison?”
- “Do you have any acquaintance(s) or personal friend(s) who are currently OR have been incarcerated in ANY Federal, State or county jail/prison?”
- “Have you ever been convicted of a misdemeanor and served time in a jail or House of Correction for said conviction?”
- “Have you ever been convicted of any crime, which resulted in your being imprisoned?”

The first two (2) questions do not reference the applicant. The second two (2) questions ask about being incarcerated *after being convicted of a crime*. There is no evidence that Mr. Matoofi was ever convicted of a crime. Yet, DOC, without even consulting with Mr. Matoofi, used this statement from a mental health evaluation to conclude that he was untruthful. DOC’s conclusion here is even more troubling when viewed in the proper context. Mr. Matoofi has met the high bar to qualify for asylum, proving that he fled Iran due to religious persecution. The personal, harrowing account of his years-long struggle for freedom, which ultimately led him to Quincy, Massachusetts, the birthplace of John Adams and John Quincy Adams, would leave most people awestruck. In that context, it is difficult to understand DOC’s subjective and *unsupported* conclusion that Mr. Matoofi was untruthful regarding an aspect of this ordeal.

Labeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and uniform review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public

safety. (See Morley v. Boston Police Department, 29 MCSR 456 (2016) (Based on unreliable hearsay and false assumptions, the Boston Police Department erroneously concluded that Mr. Morley, a federal police officer and a disabled veteran who had been deployed on active duty overseas on four occasions, was untruthful.)

### *Conclusion*

For all of the above reasons, DOC has failed to show, by a preponderance of the evidence, that there was reasonable justification to bypass Mr. Matoofi for appointment as a CO I. His appeal under Docket No. G1-19-094 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the following relief is ordered by the Commission:

1. HRD shall place the name of Seyed Matoofi at the top of any current or future certification for appointment of CO I at DOC until he is appointed or bypassed.
2. If appointed, Mr. Matoofi shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 05868. This retroactive date is for civil service seniority purposes only, and is not meant to entitle the Appellant to any additional compensation or benefits, including creditable time toward retirement.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on August 1, 2019.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding

Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Seyed Matoofi (Appellant)

Joseph Santoro (for Respondent)

Patrick Butler, Esq. (HRD)

Regina Caggiano (HRD)